IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6959 OF 2003

Gayatri Rajnanadan Giri and Ors. ....Petitioners

Versus

Satyabhanu Y.Sawant and Ors. ....Respondents

R.M.Pandey, Adv for the petitioners.

R.A.Thorat, Adv for respondent no.7.

CORAM: S.C.DHARMADHIKARI, J.

21.11.2007

P.C. :

1. The matter has been brought to this court on the question of recasting of issues.

2. It appears that the plaint was amended and that is how certain issues need to be recasted. The application in that behalf has been rejected by the Learned Trial Judge and his order is impugned before me.

3. After arguing the matter for sometime, Mr.Pandey appearing for the plaintiff and Mr.Thorat appearing for respondent no.7 agree that Issue No.1 with regard to the maintainability of the suit as suit simpliciter for injunction will not survive any longer and must be deleted. Accordingly Issue No.1 stands deleted.

4. In so far as Issue No.2 is concerned, it is undisputed that the plea with regard to the claim being barred by limitation is raised in the Written Statement and therefore instead of the word ‘plaintiff’ appearing in Issue No.2, the word ‘defendants’ stands substituted. The recasted Issue No.2 reads thus :-

> "2. Whether Defendants prove that suit claim is within limitation ? "

5. As far as the maintainability of the suit and jurisdiction of the city civil court is concerned, the pleas raised are that in the light of the amendment the valuation for the purpose of court fee and jurisdiction

must undergo a change. In such circumstances, the issue as to whether the Trial court has pecuniary jurisdiction or not requires consideration. It is not disputed by Mr.Pandey either. However, the only objection as to whether the plaintiff should prove that the suit claim is properly valued when the plea with regard to lack of pecuniary jurisdiction is raised by the defendants in the Written Statement.

6. In my view this limited controversy can be answered by slightly recasting Issue No.4 and including therein the aspect of the claim being properly valued. Recasted Issue No.4 therefore reads as under :-

> "4. Whether Defendants prove that this court has no pecuniary jurisdiction to entertain and adjudicate upon the same ?

7. These are the only issues which were requested to be recasted. The Issues having been recasted now, the suit filed in the year 1982 must proceed in accordance with law and be decided expeditiously.

Accordingly it is directed that the trial court must endeavour and decide the suit by 31.7.2008 and the parties must co-operate in the early disposal of the same by not seeking unnecessary adjournments. Writ Petition is disposed off.

(S.C.Dharmadhikari, J)